

MONTANA LEGISLATIVE HISTORY

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Chapter 434 19 93

Bill H 67 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 09 ☒ C

_____ C

_____ C

_____ C

Date Out Jan 11 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 29 ☒ C

Mar 04 ☒ C

_____ C

_____ C

Mar 04 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

CHAPTER NUMBER 181
EFFECTIVE DATE: 03/25/93

HB 67 INTRODUCED BY COCCHIARELLA
PROHIBIT APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES AS
CHILDREN'S REPRESENTATIVES
BY REQUEST OF DEPARTMENT OF FAMILY SERVICES

12/29	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
12/31	FISCAL NOTE REQUESTED		
1/04	FIRST READING		
1/07	HEARING		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE PRINTED		
1/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/13	2ND READING PASSED	99	0
1/14	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
1/16	FIRST READING		
1/16	REFERRED TO JUDICIARY		
1/29	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/06	2ND READING CONCURRED	46	0
3/08	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	96	2
4/02	3RD READING AMENDMENTS CONCURRED	100	0
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 434		
	EFFECTIVE DATE: 04/21/93		

HB 68 INTRODUCED BY FAGG
CHANGE TIME FOR DEFENDANT'S PRETRIAL DISCLOSURES TO
PROSECUTOR

12/29	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
1/04	FIRST READING		
1/06	HEARING		
1/06	COMMITTEE REPORT—BILL PASSED		
1/08	2ND READING PASSED	100	0
1/11	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
1/13	FIRST READING		
1/13	REFERRED TO JUDICIARY		
3/04	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	45	1
3/08	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		

Closing by Sponsor:

REP. COCCHIARELLA believes this bill relieves an aggrieved party's right to file a claim, alleging that the reporter or investigator acted improperly.

HEARING ON HB 67Opening Statement by Sponsor:

REP. COCCHIARELLA opened HB 67. She said the bill addresses the appointment of an attorney as guardian where children are involved in legal proceedings. The bill clarifies that DFS staff are not appropriate representatives of children in certain instances. REP. COCCHIARELLA introduced Ann Gilkey, Legal Counsel, DFS, to continue with the statement.

Proponents' Testimony:

Ann Gilkey, Legal Counsel, DFS. EXHIBIT 2

Hank Hudson, DFS, said one of the main concerns of HB 67 is the increasing number of abuse and neglect reports, the increasing numbers of investigations, and the heavy workload the protective services workers have. Mr. Hudson recommended the rules be clarified to avoid conflicts of interest, and also to limit DFS' role to those areas clearly mandated under the bill. Mr. Hudson feels there's a conflict of interest involved in the part that represents the child. He also believes that, in divorce cases where there may not be any abuse or neglect, for example, that it's not proper for the State, nor DFS, to be given the responsibility as guardian.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TOOLE asked Ms. Gilkey how many cases will be affected if DFS is no longer appointed by the District Judges to do home studies. Ms. Gilkey said the number of cases varies from region to region, county to county, but it appears that it averages 10 to 15 cases a year with an estimate of 40 hours per case of the staff's time to conduct an investigation. REP. TOOLE was concerned that DFS doesn't have the resources to work with certain cases. Ms. Gilkey said that there are varying degrees of resources available in each county. If there is only one social worker from DFS in the outlying community, that social worker would work his case load on his own time and get paid for it.

Closing by Sponsor:

REP. COCCHIARELLA said the limited staff and resources of DFS are being spread too thin. HB 67 will help agency staff focus on their mandated responsibilities - to provide child protective services with no threat of a conflict of interest.

HEARING ON HB 90

Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 3, Whitefish introduced HB 90. She stated it is a bill clarifying a person's right to use deadly force in preventing rape. State law already permits use of lethal force to prevent commission of a forcible felony, a category that includes rape. But, because the bill allows deadly force to prevent the "imminent commission" of rape, critics said it might encourage people to use deadly force in situations where it would not be necessary or appropriate. Rep. Fisher said there's a "gray area" in the law, and the bill seeks to fix it.

Proponents' Testimony:

Diane Sands, Montana Women's Lobby. EXHIBIT 3

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TOOLE asked Ms. Sands what the "gray area" really is. Ms. Sands said that the "gray area" in the bill may be interpreted as date rape, and that it should be clarified as such.

Closing by Sponsor:

There were no closing words from REP. FISHER.

EXECUTIVE ACTION ON HB 66

Motion/Vote: REP. BOB CLARK MOVED HB 66 DO PASS. Motion carried with REPS. VOGEL, WHALEN, BROWN, BIRD, WYATT voting no.

EXECUTIVE ACTION ON HB 67

Motion: REP. BROWN MOVED HB 67 DO PASS.

Discussion: REP. BROWN said he has varying degrees of confidence in some employees who work for DFS, and he is not overly supportive of this bill. He offered to amend the bill and strike Section 2 to provide rural areas with adequate coverage. The amendments would read:

1. Title, lines 7 through 9 Strike: "PROHIBITING" on line 7 through "INVESTIGATION;" on line 9
2. Title, line 10. Strike: "40-4-215,"
3. Page 2, line 1 through line 19 of page 3. Strike: section 2 of the bill in its entirety. Renumber: subsequent sections.

Vote: Motion carried with REP. BIRD voting no.

EXECUTIVE ACTION ON HB 38

Motion: REP. WYATT MOVED HB 38 DO PASS.

Discussion:

REP. TOOLE asked John MacMaster if we are penalizing ethics violations. Mr. MacMaster said that what the code of ethics 2-2-121 does is prohibit specific things. Mr. Seacat testified that there is no penalty in that chapter of the law right now. What this is going to do is penalize them by making them a misdemeanor. REP. TOOLE asked Mr. MacMaster what we are penalizing, and Mr. MacMaster said he would find out as we did not have the MCA books in the committee meeting room.

REP. VIVIAN BROOKE hopes the committee can add to HB 38. REP. JIM RICE thinks the bill needs a closer look, and REP. TOOLE also said it should be studied further.

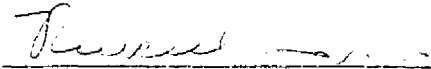
Motion/Vote: REP. DAVE BROWN MOVED HB 38 BE TABLED. Motion carried.

HOUSE STANDING COMMITTEE REPORT

January 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 67 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 7 through 9.

Strike: "PROHIBITING" on line 7 through "INVESTIGATION;" on line
9

2. Title, line 10.

Strike: "40-4-215,"

3. Page 2, line 1 through line 19 of page 3.

Strike: section 2 of the bill in its entirety

Re-number: subsequent sections

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 1-7-93 BILL NO. NB 67 NUMBER 18
 MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair	X	
Rep. Dave Brown, Vice-Chair	X	
Rep. Jodi Bird		X
Rep. Ellen Bergman	X	
Rep. Vivian Brooke	X	
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell	X	
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen	X	
Rep. Karyl Winslow	X	
Rep. Diana Wyatt	X	

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DEPARTMENT OF FAMILY SERVICES

EXHIBIT #2
DATE 1-7-93
HB 67



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STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

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DEPARTMENT OF FAMILY SERVICES
Testimony regarding HB 67

Submitted by Ann Gilkey, Legal Counsel

HB 67 is a piece of legislation that is important to the Department of Family Services. Existing law provides that children shall have representation in legal proceedings when their interests are affected. HB 67 does not impact that right, but clarifies that DFS staff are not appropriate representatives of children in certain instances.

Section 1 prohibits DFS staff from being appointed to represent the interests of a child in support, custody or visitation when his or her parents are involved in a divorce. Section 2 prohibits the court from ordering DFS from conducting home studies for divorcing parents, but allows DFS to share any information relevant to the best interests of the child with the person conducting the home study. Section 3 prohibits DFS staff from being appointed as guardian ad litem for a paternity action. Section 4 prohibits DFS staff from being appointed guardian ad litem in an abuse or neglect judicial proceeding.

These amendments to existing law will help the state avoid a conflict of interest when the department may have a legal responsibility to protect an abused or neglected child who may also be involved in his or her parent's divorce, paternity or abuse and neglect proceedings. Agency staff cannot adequately represent a child in a legal proceeding when wearing another, protective services hat.

The amendments in this bill also address the growing concern of the agency that it is having difficulty meeting its legally mandated responsibilities, such as investigating referrals of child abuse or neglect. Being ordered to perform these other services for the public, that may not be related to any child abuse or neglect, takes a tremendous amount of staff time away from the more critical needs of Montana's youth. The limited staff and resources of DFS are being spread too thinly. HB 67 will help agency staff focus on their mandated responsibilities to provide child protective services, with no threat of a conflict of interest.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 67
DATE 1-7-93 SPONSOR(S) Cocchiarella

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ann Gilkey	DFS	X	
Hank Huesh	DFS	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

when an investigation is done.

Proponents' Testimony:

Ann Guilkey, Department of Family Services, read from prepared testimony. (Exhibit #1)

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Representative Cocchiarella closed.

HEARING ON HB 67

Opening Statement by Sponsor:

Representative Cocchiarella, District 59, told the Committee that section 2 would be amended out and the original language would be put back into the bill. HB 67 asks that the courts not assign the Department of Family Services to represent a child if they already have been investigating the family in an abuse or neglect situation. That causes a conflict of interest for that person who has been appointed by the Department of Family Services. The amended section in HB 67 prohibits the court to order the Department of Family Services staff to conduct home studies for divorce or custody proceedings. The Department of Family Services is overburdened with reports of child abuse and neglect. The reports are not being taken care of because the courts are ordering the Department of Family Services to conduct investigations for divorce proceedings.

Proponents' Testimony:

Ann Guilkey, Department of Family Services, read from prepared testimony. (Exhibit #2)

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Ann Gilkey about section 2. Ms. Gilkey said the Department is requesting that the language in the original bill be put back in.

Senator Blaylock asked Ms. Gilkey who would investigate divorce

proceedings. Ms. Gilkey said that presently the agency is being ordered to conduct home studies for divorcing people and are allowed to charge \$250 per home. That money is most often waived, and the Department is ordered to conduct the investigations for free. The people who would be available to conduct investigations would be a licensed social worker who would be paid by the person who has the home study done.

Senator Blaylock asked Ms. Gilkey if the court could force social workers to do an investigation for free. Ms. Gilkey said she did not know if a court could hire a private individual to conduct an investigation for free. The court can order a state agency to do it for free, but not a private individual.

Senator Bartlett asked Representative Cocchiarella why section 2 was amended out. Representative Cocchiarella said that poor people could not have a home investigation for child custody. There are alot of abuse and neglect cases that are not being investigated because the Department is being ordered to do home studies for custody or divorce situations.

Senator Bartlett asked Ann Gilkey about investigations with divorce proceeding when abuse or neglect is also a consideration. Ms. Gilkey said that the language prohibits the agency from conducting home studies, even if the agency is involved in an abuse or neglect case. The agency should not do the home study because it would be a conflict of interest.

Senator Bartlett asked Ms. Gilkey about resources concerning the home studies. Ms. Gilkey said the Department of Family Services only gets paid for approximately half of the home studies that are done.

Senator Blaylock asked Representative Cocchiarella about striking Section 2. Representative Cocchiarella said section 2 needs to be put back in HB 67 with the new language.

Chair Yellowtail asked Ann Gilkey to work with Senator Blaylock and Senator Bartlett on an amendment for section 2.

Closing by Sponsor:

Representative Cocchiarella told the Committee that HB 67 talks about a conflict of interest and that it makes it hard for the Department of Family Services to do their job. Section 2 needs to be amended with the new language.

HEARING ON SB 41

Opening Statement by Sponsor:

Senator Burnett, District 42, said that SB 41 is not to destroy the Department of Family Services, but to strengthen it. Senator Burnett told the Committee the Department of Family Services has the compassion of the Internal Revenue Service. The intent of SB

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 1-29-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

DEPARTMENT OF FAMILY SERVICES



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DEPARTMENT OF FAMILY SERVICES Testimony regarding HB 67

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

Submitted by Ann Gilkey, Legal Counsel

DATE 1-29-93

BILL NO. HB 67

HB 67 is a piece of legislation that is important to the Department of Family Services. Existing law provides that children shall have representation in legal proceedings when their interests are affected. HB 67 does not impact that right, but clarifies that DFS staff are not appropriate representatives of children in certain instances.

Section 1 prohibits DFS staff from being appointed to represent the interests of a child in support, custody or visitation when his or her parents are involved in a divorce. Section 2 prohibits the court from ordering DFS from conducting home studies for divorcing parents, but allows DFS to share any information relevant to the best interests of the child with the person conducting the home study. Section 3 prohibits DFS staff from being appointed as guardian ad litem for a paternity action. Section 4 prohibits DFS staff from being appointed guardian ad litem in an abuse or neglect judicial proceeding.

These amendments to existing law will help the state avoid a conflict of interest when the department may have a legal responsibility to protect an abused or neglected child who may also be involved in his or her parent's divorce, paternity or abuse and neglect proceedings. Agency staff cannot adequately represent a child in a legal proceeding when wearing another, protective services hat.

The amendments in this bill also address the growing concern of the agency that it is having difficulty meeting its legally mandated responsibilities, such as investigating referrals of child abuse or neglect. Being ordered to perform these other services for the public, that may not be related to any child abuse or neglect, takes a tremendous amount of staff time away from the more critical needs of Montana's youth. The limited staff and resources of DFS are being spread too thinly.

The House Judiciary amended HB 67 to delete Section 2 which prohibits the court from ordering DFS to conduct home studies on divorcing parents. Taking staff time to conduct home studies for the divorcing population creates a significant negative impact on the agency's ability to address its legal mandate of providing protective services to Montana's abused and neglected children,

elderly and persons with developmental disabilities. There are other professionals, such as licensed private social workers, available who can provide this service. Field staff have estimated that conducting custody home studies takes up to 5000-6000 hours/yr of social worker time. This equates to approximately 2.5 - 3 FTE. In this time of fiscal cut backs and staff reductions, every hour of every social worker's day is critical toward getting the agency's protective services mandated duties accomplished. The state can no longer afford to provide this public service to people otherwise not involved with the agency.

Department of Family Services needs your support in passing HB 67, amended to include the original language contained in Section 2.

Motion/Vote:

Senator Rye moved HB 151 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 66

Motion:

Senator Bartlett moved HB 66 BE CONCURRED IN.

Discussion:

Senator Bartlett said HB 66 provides more protection for people who are required by the statute to report cases of child abuse by establishing that they make those reports in good faith.

Senator Halligan said it is very rare for anyone other than spouses involved in a child custody dispute, to maliciously report false cases of child abuse.

Vote:

The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 67

Motion:

Senator Bartlett moved to AMEND HB 67.

Discussion:

Senator Bartlett explained the amendments. (Exhibit #5)

Senator Towe asked Senator Bartlett about the concerns the House Judiciary Committee had with HB 67. Senator Bartlett said she attempted to address the concern of the House Committee. There are cases where there may be no study conducted if the Department of Family Services is taken completely out of the picture as a potential source of those studies. HB 67 is trying to identify the instances in which it would be appropriate for the Department of Family Services to conduct the investigation and to limit that to circumstances where no other funding exists.

Senator Towe asked Senator Bartlett about the conducting of studies by the Department of Family Services. Senator Bartlett said the Department of Family Services may not be ordered to conduct the study unless they are recipients of benefits and all reasonable options for the payment of the investigation have been exhausted. Senator Bartlett said the real desire of the Department of Family Services is to get out of doing as much of these studies as they can because it has taken away from what

their real mission is and draining staff resources.

Vote:

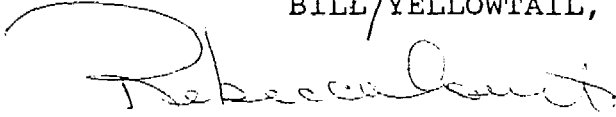
The motion to amend HB 67 CARRIED with Senator Halligan voting NO.

Motion/Vote:

Senator Bartlett moved HB 67 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:28 a.m.


BILL YELLOWTAIL, Chair

REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-4-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 4, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 67 (first reading copy -- blue), respectfully report that House Bill No. 67 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 9.

Following: "INVESTIGATION,"

Insert: "PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION EXCEPT IN CERTAIN CASES;"

2. Title, line 10.

Following: "~~40-4-215,~~"

Insert: "40-4-215,"

3. Page 3.

Following: line 19

Insert: "Section 2. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report shall must be paid according to the final order.

(2) In preparing his a report concerning a child, the investigator may consult any person who may have information about the child and his the child's potential custodial

arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if ~~he~~ the child has reached the age of 16 unless the court finds that ~~he~~ the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person ~~whom he~~ the investigator has consulted for cross-examination. A party may not waive ~~his~~ the right of cross-examination prior to the hearing.""

Renumber: subsequent sections

-END-

Amendments to House Bill No. 67
Third Reading Copy (BLUE)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 3, 1993

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-4-93

BILL NO. HB 67

1. Title, line 9.

Following: "~~INVESTIGATION~~,"

Insert: "PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF
FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION
EXCEPT IN CERTAIN CASES;"

2. Title, line 10.

Following: "~~40-4-215~~,"

Insert: "40-4-215,"

3. Page 3.

Following: line 19

Insert: "Section 2. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. ~~If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests.~~ The cost of the investigation and report ~~shall~~ must be paid according to the final order.

(2) In preparing ~~his~~ a report concerning a child, the investigator may consult any person who may have information about the child and ~~his~~ the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if ~~he~~ the child has reached the age of 16 unless the court finds that ~~he~~ the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's

report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person ~~whom he~~ the investigator has consulted for cross-examination. A party may not waive ~~his~~ the right of cross-examination prior to the hearing.""
{Internal References to 40-4-215: None.}

Renumber: subsequent sections